

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP WESTLEY JOHNSON,

Defendant-Appellant.

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UNPUBLISHED  
October 27, 1998

No. 201980  
Montcalm Circuit Court  
LC No. 96-000246 FH

Before: Talbot, P.J., and McDonald and Neff, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3). The trial court sentenced defendant to five to 22½ years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues the trial court abused its discretion by refusing to admit a receipt from a pharmacy in Cedar Springs to support his alibi that he was in Cedar Springs when the crime was committed. We agree. The receipt was relevant because it was material and had probative force. *People v Mills*, 450 Mich 61, 67; 537 NW2d 909 (1995). The receipt was material because it was offered to help prove defendant's alibi, which was clearly at issue in the case. Furthermore, the receipt had probative force because it tended to make defendant's claim that he was in Cedar Springs when the crime was committed slightly more probable. Although we recognize the receipt's lack of a time-stamp made it rather weak evidence that defendant was in Cedar Springs at the time of the crime, "any" tendency of evidence to make the existence of a fact of consequence more probable is sufficient probative force. *Id.* at 68. Accordingly, the trial court abused its discretion in excluding the receipt as evidence. *People v Starr*, 457 Mich 490; 577 NW2d 673 (1998).

However, we find the trial court's erroneous exclusion of the receipt is harmless. In light of the strength and weight of the evidence in this case, including eyewitness identification of defendant, and the weak probative value of the excluded evidence, we believe it is highly probable that the evidentiary error did not affect the judgment. *People v Harris*, 458 Mich 310, 320; \_\_\_ NW2d \_\_\_ (1998); *People v Mateo*, 453 Mich 203, 219, 212; 551 NW2d 891 (1996).

Defendant next argues the trial court abused its discretion by belittling defense counsel in front of the jury. We disagree. Although defendant failed to object to the trial court's comment at trial, we will review the issue. See *People v Collier*, 168 Mich App 687, 697; 425 NW2d 118 (1988). However, we find the trial court's comment to defense counsel to "[k]eep on the same subject" did not belittle counsel so as to destroy the judicial impartiality necessary for a fair hearing and did not deny defendant a fair trial by unduly influencing the jury. Accordingly, reversal is not warranted. *Id.* at 698; *People v Anderson*, 166 Mich App 455, 462; 421 NW2d 200 (1988).

Affirmed.

/s/ Michael J. Talbot  
/s/ Gary R. McDonald  
/s/ Janet T. Neff